

## **REMARKS**

This paper is filed responsive to the Final Office Action mailed October 6, 2009 in the above-identified matter. Presently, claims 1, 3, 5, 7 and 9 are pending in the application. Claims 1, 3, 5, 7 and 9 stand rejected under 35 U.S.C. §103(a) over Dinger III et al. (US Patent Publication No. 2005/0159812) in view of Schmieding (US Patent No. 5,211,647). Applicants traverse the rejection and request reconsideration and reexamination of the subject matter.

The Examiner has rejected all of the claims under 35 U.S.C. §103(a) over Dinger III in view of Schmieding. Applicants submit that the Examiner has failed to establish a prima facie case of obviousness.

Applicants claim an implantable cross-pin for use in an ACL repair procedure. Neither Dinger III nor Schmieding are directed to cross-pins. Dinger III is an implant which receives the graft inside. In contrast, a cross-pin is inserted through the graft. The portion of Schmieding cited by the Examiner is a sheath for inserting an interference screw. Neither device possess any functionality as a cross-pin. Further, the device in Schmieding is a different device with a different function than the device of Dinger III and there would be no reason to take features from the sheath of Shmiedling and incorporate them into the implant of Dinger III. The cut-out 17 of Schmieding allows the interference screw to be driven into the bone. Why would Dinger III add this feature when it does not use an interference screw, and functions as an implant and not a sheath?

Even if one were to make the alleged combination it would fail to teach the presently claimed invention. First, there is no teaching of a cross-pin. Moreover, the Examiner seems to have misread the Schmieding patent. Schmieding's sheath has a cut-out, not a trough; it is open all the way to the interior lumen and no guide wire is seated in it. During use the cut-out faces the bone so that the interference screw can be driven into the bone through the cut-out. The wall on the sheath opposite the cut-out faces the graft and protects the graft from the screw threads as

the interference screw is being driven home. The suture 12 that the Examiner analogizes to a guide wire does not pass through the sheath or the cut-out. The passage at column 3, line 2 refers to how the sheath protects the graft not a guide wire. It is easy to understand the misreading as the disclosure of Schmieding is abbreviated and difficult to follow. Nevertheless, Schmieding fails to teach the features of an interior tunnel obliquely oriented relative to the central longitudinal axis, and a guide wire seated in a trough which the Examiner admits that Dinger III also lacks. Accordingly, the alleged combination fails to make obvious Applicants' claimed invention.

Applicants submit that the application is presently in condition for allowance and request favorable reconsideration and early notice of allowance. If it would speed prosecution, the Examiner is encouraged to contact the undersigned attorney by telephone.

Respectfully submitted,

By: /Andrew C. Farmer/  
Andrew C. Farmer  
Reg. No. 35,868

Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933  
(732) 524-2825  
Dated: December 2, 2009